

IN THE
Supreme Court of the United States

OCTOBER TERM, 1976

No. ~~77-~~ ⁴⁵

ROBERT CALHOUN JR.,

Appellant,

—against—

THE STATE OF NEW YORK, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JURISDICTIONAL STATEMENT

ROBERT CALHOUN JR.
111-11 132nd Street
Jamaica, New York 11420
(212) 529-1374

Appellant Pro Se

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1976

No. _____

 ROBERT CALHOUN JR.,
Appellant,

—against—

THE STATE OF NEW YORK, *et al.*,*Appellees.*

 ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JURISDICTIONAL STATEMENT

Appellant appeals from the final judgment of the United States Court of Appeals for the Second Circuit that was entered on February 10, 1977. This appeal is brought pursuant to 28 U.S.C. 1254(1).

Appellant pleads pursuant to *Commonwealth Coatings Corp. v. Continental Casualty Co.*, 393 U.S. 145, 89 S.Ct. 337, 21 L.Ed.2d 301. "Any tribunal permitted by law to try cases and controversies must not only be unbiased but must avoid even the appearance of bias."

The appellant has been denied due process of law in the lower courts and prays to this tribunal for his Fourteenth Amendment rights.

Opinions Below

Judgment was rendered in the United States District Court for the Eastern District of New York, on September 26, 1975 by Honorable Orrin G. Judd on behalf of the Court, dismissing the complaint without the benefit of replies by the defendants. The "Memorandum and Order" dismissed on the grounds that the "State of New York and the Supreme Court of the State of New York, Queens County, are not persons within the meaning of the Civil Rights Act."

On February 10, 1977, the United States Court of Appeals for the Second Circuit issued judgment affirming the District Court ruling. The Appeals Court ruling is contrary to the Rules of Appellate Procedure and does not address the pleadings or questions of the appellant.

Jurisdiction

The judgment of the United States District Court for the Eastern District of New York is premature and abridge the rights of the appellant to have a fair and impartial adjudication of his complaint (see correspondance between Hon. Orrin G. Judd and Judge Anthony Livoti). The appellant wants to emphasize that Hon. Orrin G. Judd's letter to Hon. Anthony Livoti was written at the same time that he was in the process of deciding this case without the aid of the appellees answer. The decision completely ignores the constitutional aspect of the complaint.

Jurisdiction in this court is granted pursuant to 28 U.S.C. 1254(1) as well as *Commonwealth Coatings Corp.*

Statutes Involved

This case involves the Domestic Relation Laws of New York as they are applied in this action. The application and interpretation of the laws as well as the procedure conflict with the New York State Constitution and the Constitution of the United States in this dispute. The laws and rules that govern will be set forth herein against the applicability of the lower courts.

Questions Presented

Does a party that defaults in a United States District Court, be it private or governmental, have standing in the United States Court of Appeals to enter a defense of sovereign immunity? (as per The State of New York).

Does the State of New York come within the meaning of the Fourteenth Amendment's equal protection and due process clauses? Is it liable for the violation of these constitutional clauses? How may redress be had by me in such circumstances as enumerated in this question?

Does the State of New York owe a duty to its citizens to protect their rights or is it the persons responsibility to protect his rights?

Can a judgment that is contrary to the "Domestic Relations Laws" of the State of New York, grant a divorce and impose punishment upon the appellant without giving the appellant an opportunity to refute the charges?

Statements of Facts

The appellant was served the summons and complaint on or about February 25, 1975 at his home located at 111-11 132nd Street, Jamaica, Queens County, New York. The appellant went to the Supreme Court located at 88-15 Sutphin Blvd., Jamaica, New York to offer an answer to the summons and complaint only to find that there was no record of the action in that court. I then went to the Criminal Court on Queens Blvd. only to find that criminal cases are the only cases filed with that court. My final gesture was to go to the office of Attorney George M. Winston, the lawyer who served the summons and complaint. I tried to convince the attorney that the action had no merit and that the only person benefitting from this action was him. I told him that I was not interested in dividing my property nor was I about to get some lawyer to negotiate such division. We became impassioned on this issue so I left to return home.

I received a letter in July 1975 from Mr. Winston informing me that he had received instructions to proceed in the divorce matter and that I should get in touch with him within ten days. I did not contact him nor did I get any further notices that he had introduced the case into the court.

On September 15, 1975, I received a final decree of divorce from my teenage daughter as I arrived home from work. She went across the street to get a neighbor to witness the service of the papers. I took the "Findings and Judgment" up to the Supreme Court with a statement for the court to consider since I had not been properly notified nor had I been given an opportunity to be heard in the matter. The clerks in the Supreme Court would not take my

papers and they seemed to know that something was amiss but I suppose they were having some fun at my expense. After failing to reason with the various persons in the court, I realized that I was being taken for a fool. I went to the various persons that I had been referred to in order that I could indicate in a lawsuit who some of the culprits are. I then entered a complaint in the United States District Court for the Eastern District of New York. I went to the Supreme Court at 88-11 Sutphin Blvd. searched the records and I xeroxed everything in the files, as I studied these documents I realized that all of the irregularities made the divorce proceedings a sham.

When I discovered the letter written by Hon. Orrin G. Judd, I knew then that there was some collusion and an attempt to negate my complaint. I did not try to keep the action in the District Court nor did I try to appeal in the state courts because I knew from this letter that the State Judges and the District Court Judges were in collaboration. I am skeptical about the Circuit Court Judges in the Court of Appeals. My hopes now lie with the justice of this tribunal in an attempt to gain justice out of a most frustrating situation.

The "Memorandum and Order" issued by Hon. Orrin G. Judd was rendered on September 26, 1975 just four days after the complaint was filed in the court. A timely "Notice of Appeal" was filed on October 3, 1975. There was a delay in docketing this case in the Court of Appeals for the Second Circuit because a notice sent by the Court of Appeals failed to reach me. A motion was made for an extension of time for paying the docketing fees but no action was taken on the motion until August 9, 1976 when the appellant was given until August 16, 1976 to pay the docketing fees.

A "Civil Appeal Scheduling Order #1" was mailed on August 21, 1976 which ordered the filing of the appellant brief and the joint appendix on or before 9-22-76, 1976.

It further ordered that the appellees file briefs 30 days after the filing of the appellant's brief.

It further ordered that ten (10) copies of each brief be filed with the Clerk, but that the court might require as many as fifteen (15) additional copies before final disposition of the action.

It further ordered that argument of the appeal be ready to be heard during the week of 11-8-76, 1976.

The appellant did abide by the terms and conditions of the "Civil Appeal Scheduling Order #1" but the appellees George M. Winston and Alice M. Smith Calhoun failed to respond to the order. A motion was entered in the District Court on October 27, 1975, that holding New York State in default for failing to respond to the summons and complaint served on them on September 25, 1975.

In a motion for action on the motion to extend the time to pay docketing fees the appellant requested the Court of Appeals to rule on the status of the State of New York because these appellees had not responded to the summons. No action was taken on this motion except to issue a time limitation of August 16, 1976 to pay the docketing fees.

The appellant entered a motion on August 25, 1976 requesting that the proceedings in the Supreme Court of the State of New York be made a part of this appeal in order that the appellant could contest them as being contrary to the Fourteenth Amendment guaranties. No action was evidenced on this motion.

The appellant received the notice that argument would be heard on January 24, 1977 in room 1705 of the United

States Court House at Foley at 10:30 A.M. I did abide by the notice and presented argument to substantiate the allegations of my complaint whereupon the appellee the State of New York introduced its claim of immunity pursuant to the Eleventh Amendment of the Constitution of the United States of America.

The "Notice of Appeal" in this action was presented to the Clerk of the Court in the United States Court of Appeals for the Second Circuit on December 15, 1976 and it was refused for the reason that I could not appeal this matter and that a writ of certiorari was the means by which I could get relief from the judgment. I travelled to the office of the Clerk of the Supreme Court in Washington D.C. with the Notice of Appeal and inquired as to the proper procedure for filing this appeal. I was assured that my papers were in order and that there was no reason that he could see why the "Notice of Appeal" was not accepted. I travelled back to New York and on the next day, December 21, 1976, I filed the Notice of Appeal in the United States Court of Appeals for the Second Circuit.

The appellant feels that the judgment of this Court is necessary and proper to insure justice and an impartial adjudication of this dispute. The plaintiff asks these honorable Justices, "If the procedure is irregular and the facts and rules are ignored can the judgment be just and proper?"

The appellant pleads for the opportunity to express to this Supreme Court of the United States his grievances.

Argument I

The summons served on the appellant is defective, incomplete and contrary to CPLR, Article 3 section 308(2) in that it does not designate the court where the action is

triable neither was it filed with the clerk of the court as prescribed by this section (within twenty days). This is also contrary to Rule 2102 of the CPLR.

This kind of procedure denies the appellant due process of law and the protection provided by these laws.

Argument II

The "Note of Issue" was not served on the appellant in any form which is contrary to Rule 3402 of the CPLR, neither was the service of the summons completed as prescribed by Article 3 section 308. Since proof of service is required by Rule 3402 the court is negligent in enforcing this rule thereby denying the appellant due process of law as well as the protection provided by these laws.

Argument III

The affidavit of regularity is a false affidavit that is entered to deceive this court. This is a deliberate attempt to deceive the court and the defendant and it amounts to entering fraud and deceit into the action. This is cause to render judgment against the plaintiff-appellee for fraud and deceit. The procedure does not conform to the usual procedure for this type of action.

Argument IV

The service of the summons and complaint on the appellant at his home located at 111-11 132 Street, Jamaica, New York is cause to dismiss the allegation of abandonment yet the Supreme Court of New York granted the divorce on the grounds of abandonment. This judgment violates Article 12 section 220 of the Domestic Relations Laws of New York.

This service also negates the allegation of absence for one consecutive year prior to commencement of the action (Article 12 section 221).

Argument V

The clerks in the Supreme Court of New York violated Article 1 section 103 of the Civil Practice Law and Rules of New York when they refused to accept the papers offered by the defendant-appellant. They denied the appellant due process of law and the protection provided by this law.

Argument VI

The affidavit of service of the "Findings and Judgment" is a fraudulent document entered for the purpose of deceiving this court. The deponent, Roberta Calhoun, is a party to the action and the teenage daughter of the appellant. This service is contrary to the laws of the State of New York as well as immoral in character (see Article 10 section 1004 of the CPLR). The entering of this notarized document constitutes a deliberate and knowing act of fraud and deceit.

Argument VII

The "Findings and Judgment" were issued on September 9, 1975 which was the day before the Summons and Complaint was filed in the Supreme Court of New York, September 10, 1975. This act borders on conspiracy and collusion as it insinuates that the court knew beforehand what the complaint would be and what the judgment should be. This is a gross abuse of the judicial process.

Argument VIII

The State of New York has defaulted in the United States District Court for the Eastern District of New York by failing to respond to the summons and complaint issued by the court.

The State of New York has failed to defend or deny the allegations of denying the appellant due process of law and the equal protection of its laws in this instant case; nor has the state demonstrated to the court what process was followed and how this process fulfilled the Fourteenth Amendment requirements of due process and equal protection of the law.

The court erred when it denied the appellant's motion to hold the state in default by insinuating that service was not proper. The court supersedes its authority when it arbitrarily ignores the Federal Rules of Civil Procedure by acting contrary to these Rules (see Rule 12 of the Federal Rules of Civil Procedure).

Argument IX

Honorable Orrin G. Judd acted partial and biased in favor of the State of New York when he corresponded with Honorable Anthony Livoti of the Supreme Court of New York and when he acted to dismiss the complaint without allowing the defendants an opportunity to answer the complaint. These acts denied the appellant the equal protection of the laws.

Argument X

The United States Court of Appeals for the Second Circuit did not consider the "Questions Presented" in the appellant's brief nor did it rule on the default of the State of New York.

The judgment issued by the United States Court of Appeals for the Second Circuit was rendered by clerical personnel rather than by the Circuit Judges whose duty it is to render such decisions. These acts of omissions as well as the act of adjudication by the clerical personnel deny the appellant due process of law and the equal protection of the laws.

For all of the arguments put forth by the appellant in the foregoing paragraphs, the appellant begs for the supervision of this court to carry out the proper adjudication of this dispute. The appellant begs for justice irrespective of class or political sway.

CONCLUSION

The appellant pleads for judgment in this instant case based on the following facts:

1. The State of New York in considering the action failed to protect the rights of the appellant to be heard.
2. The clerks in the Supreme Court of New York, Queens County, violated the Civil Practice Law and Rules when they refused to allow the appellant to file a motion even if the papers were not in proper order.
3. The Supreme Court of New York, Queens County, ignored the following requirements for issuing divorces in accordance with the Domestic Relations Laws of the State of New York.

(a) A prima facie case of marriage is necessary prior to the issuance of a final decree of divorce on any grounds. No such case was established.

(b) Corroborating evidence or testimony to prove the allegations of the complaint. Neither evidence or testimony was offered in this case.

(c) Service of the Summons and Complaint on the appellant at his home negated the grounds of abandonment. Also the service of the judgment by the infant daughter of the appellant is repugnant to state as well as moral law.

(d) The "Findings and Judgment" dated September 9, 1975 was issued one day earlier than the filing date of September 10, 1975 stamped on the Summons and Complaint.

(e) The pleadings in the complaint conflict as do the findings and judgment conflict.

4. The State of New York has defaulted in the United States District Court for the Eastern District of New York.

5. The State of New York has not denied the charges of denying the appellant due process of law and the equal protection of the laws nor has the State of New York offered evidence to establish a defense against these allegations.

6. The State of New York has entered a plea for the Eleventh Amendment protection seeking immunity from suit. This is a ploy for the delay of judgment and should be ruled so and penalties should be assessed in accordance with the Federal Rules of Civil Procedure, Rule 11.

The plea entered by the State of New York for the Eleventh Amendment protection was entered in the United States Court of Appeals for the Second Circuit but no plea whatsoever was entered in the United States District Court for the Eastern District of New York.

For all of the reasons enumerated in this brief and for those reasons evidenced by the facts stated but not enumerated the appellant pleads for judgment in his favor and adverse to the appellees. These pleas for justice and judgment are respectfully submitted for your honorable consideration.

ROBERT CALHOUN JR.
111-11 132nd Street
Jamaica, New York 11420

APPENDIX

Judgment and Affirmation of U.S. Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

76-7384

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the tenth day of February, one thousand nine hundred and seventy-seven.

Present:

HON. ROBERT P. ANDERSON,
HON. JAMES L. OAKES,
HON. MURRAY I. GURFEIN,

Circuit Judges.

ROBERT CALHOUN JR.,

Plaintiff-Appellant,

v.

THE STATE OF NEW YORK, its agents, SUPREME COURT OF
NEW YORK, QUEENS COUNTY, CHIEF CLERK KALISKI,
COURT OFFICER REED, MR. KRUMSEIK and ALICE M.
SMITH CALHOUN and GEORGE M. WINSTON,

Defendants-Appellees.

Appeal from the United States District Court for the
Eastern District of New York.

Judgment and Affirmation of U.S. Court of Appeals

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York, and was argued by the appellant pro se and by counsel for the appellees.

This civil rights action brought under the Fourteenth Amendment and 42 U.S.C. 1983 arises out of appellant's divorce action, Calhoun v. Calhoun, Index No. 9866/75, in the Supreme Court of the State of New York, Queens County. In that divorce action, there was a hearing before Justice Kasoff after the institution of this suit on appellant's motion to vacate the decree of divorce which was denied, and there is a pending appeal from the order granting Mrs. Calhoun a divorce to the Appellate Division of the Supreme Court.

Under the Eleventh Amendment, the State of New York may not be sued for damages. *Edelman v. Jordan*, 415 U.S. 651 (1974). As to the other defendants, appellant's allegations of lack of due process have been adjudicated in the state courts where an appeal is pending, so that if *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975) is applicable, considerations of comity and federalism require the federal courts not to interfere until state remedies are exhausted. While *Huffman v. Pursue Ltd.* is distinguishable on the basis that it involved a civil proceeding akin to a criminal prosecution, 420 U.S. 603-605, similar considerations of comity and federalism apply in this domestic relations matter, as to which we have only recently once again reiterated in a slightly different context that we should "keep our federal hands off. . . ." *Kamhi v. Cohen*, 512 F.2d 1051, 1056 (2nd Cir. 1975).

Judgment and Affirmation of U.S. Court of Appeals

Judgment affirmed. Appellant's motion to strike the State's brief and his motion for a default judgment against the State are both denied. Cost to neither party.

.....
ROBERT P. ANDERSON

.....
JAMES L. OAKES

.....
MURRAY I. GURFEIN
Circuit Judges.

Memorandum and Order of U.S. District Court

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

75-C-1565

September 26, 1975

ROBERT CALHOUN JR.,

Plaintiff,

—against—

**THE STATE OF NEW YORK, its agents, SUPREME COURT OF
NEW YORK, QUEENS COUNTY, CHIEF CLERK KALISKI, MR.
KRUMSIEK, and COURT OFFICER REED and ALICE M.
SMITH and GEORGE M. WINSTON,**

Defendants.

Submitted by:

ROBERT CALHOUN JR.

Plaintiff, *pro se*

JUDD, J.

MEMORANDUM AND ORDER

Plaintiff seeks an order to stay a judgment for divorce, support and incidental relief, entered in the Supreme Court of New York, Queens County. (#9866/75—Durante, J.). The judgment requires him to vacate the home where he has lived for twelve years.

Memorandum and Order of U.S. District Court

Plaintiff's complaint asserts a civil rights action under 42 U.S.C. 1983 against the State of New York, the Supreme Court of the State of New York, Queens County, certain employees of that court, and two private citizens, including the attorney who represented his wife in the divorce action. The gist of plaintiff's complaint, as understood by this court is that the named court employees refused to accept his *pro se* papers for filing in the divorce action. His papers sought a stay on the grounds that he had not been given notice or a hearing.

As an initial matter, this action must be dismissed as against the State of New York and the Supreme Court of the State of New York, Queens County. Such defendants are not "persons" within the meaning of the Civil Rights Act. *Monroe v. Pape*, 365 U.S. 167, 81 S.Ct. 473 (1961).

Given the limits on a federal court's power to enjoin a state court judicial proceeding, *Huffman v. Pursue Ltd.*, — U.S. —, 95 S.Ct. 1200 (1975), and the lack of any constitutional right to counsel in civil actions, *Matter of Smiley*, 36 N.Y.2d 433, 369 NYS 2d 87 (1975), there may be a duty on court personnel at least to show a *pro se* litigant how to draw a simple order to show cause for a stay pending appeal.

While the court employees may perhaps be liable for turning away an uncounseled litigant, and the divorce judgment may be voidable if it was entered without notice, plaintiff's wife is a necessary party to any action to stay execution of the judgment. She has not been named as a defendant in this court (unless she is the defendant named as Alice M. Smith), and federal jurisdiction of the controversy with her raises different issues.

As a practical matter, plaintiff's request to prolong his residence in his former matrimonial domicile should be

Memorandum and Order of U.S. District Court

made to the Supreme Court of New York, or by appeal from the divorce decree, and preferably with the aid of counsel.

At worst, plaintiff might hold his ground and defend a contempt motion by showing his frustration in seeking a stay. This court can express no opinion on that subject.

It is Ordered that the complaint be dismissed as against the defendants, the State of New York and the Supreme Court of the State of New York, Queens County; and it is further

ORDERED that the motion to stay a judgment of the Supreme Court of New York, County of Queens, be denied, without prejudice to renewal on compliance with the Rules of this Court, including notice to plaintiff's wife and a supporting memorandum of law.

ORIN J. JUDD
U.S.D.J.

Order of U.S. District Court**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF NEW YORK

75-C-1565

December 4, 1975

ROBERT CALHOUN JR.,

Plaintiff,

—against—

THE STATE OF NEW YORK, *et al.*,

Defendants.

JUDD, J.

ORDER

Plaintiff's motion for a default judgment comes before this court on his affidavit filed with the court on November 6, 1975, the answering affirmation of the Attorney General, and the supporting affidavit of the plaintiff sworn to November 17, 1975. In this court's Memorandum and Order of September 26, 1975 the complaint was dismissed against the State of New York and the Supreme Court, Queens County. The records of the United States Marshal's office indicate that there have been no arrangements made by the plaintiff for service of the summons and complaint on defendants Krimsiek, Kaliski and Reed. Therefore it is

ORDERED that the motion to enter a default be denied.

ORIN J. JUDD
U.S.D.J.

Memorandum of New York Supreme Court

SUPREME COURT—QUEENS COUNTY

SPECIAL TERM PART 5-A

Index No. 9866/75

By Kassoff, J.

Dated February 24, 1976

ALICE M. CALHOUN

vs.

ROBERT CALHOUN JR.

This is a motion by plaintiff for an order to punish the defendant for contempt for his failure to comply with an order of this court dated September 9, 1975. Defendant, in opposing affidavits pro se, requested relief vacating and setting aside the judgment of divorce. The court treated defendant's opposing affidavits as a cross motion.

Defendant first appeared on January 19, 1976 without counsel and stated that he did not need counsel to proceed. The court very strongly suggested to defendant that it would be in his best interest to obtain an attorney to represent him. The court recommended that defendant go to the Bar Association if he needed an organization to refer an attorney. The case was adjourned, and then called on the adjourned date of February 18, 1976. The court once again inquired if defendant needed counsel to represent him, to which he stated "No" and after once again telling the defendant he could have an adjournment to obtain an

Memorandum of New York Supreme Court

attorney, the defendant refused and the hearing commenced.

After a hearing, plaintiff's motion to punish the defendant for contempt is granted and the defendant is adjudged to be in contempt of court and fined the sum of \$1,919. said sum representing child support arrears and counsel fees. Defendant may purge himself of his contempt for non-payment of child support by paying \$419 within 10 days of receipt of a copy of the order to be entered hereon, and the balance in ten equal payments of \$100 each, commencing 21 days after service of a copy of said order. This money is to be paid in addition to the regular bi-weekly child support payments of \$473.

Defendant may purge himself of contempt for non-payment of attorney's fees by paying \$100 within 10 days of receipt of a copy of the aforesaid order, the balance to be paid in five equal payments of \$80 each, at weekly intervals thereafter.

Plaintiff is given leave to enter a money judgment in the sum of \$1,919.

Defendant is directed to pay the plaintiff the sum of \$250 as counsel fees for the bringing of this motion. Defendant is directed to pay \$100 within 10 days of receipt of a copy of the above mentioned order, the balance to be paid in three equal payments of \$50 each at weekly intervals thereafter.

The court also finds defendant to be in contempt for failing to vacate the marital premises, as provided in the judgment of divorce. Defendant is directed to vacate the marital premises within 5 days of service of a copy of the order to be entered hereon.

Memorandum of New York Supreme Court

Defendant's cross motion to vacate and set aside the judgment of divorce is denied.

Settle order.

.....
J.S.C.

Findings and Judgment of New York Supreme Court

At a Special Term Part V of the Supreme Court of the State of New York, held in and for the County of Queens, at the General Court-house, 88-11 Sutphin Blvd., Jamaica, New York, on the 9th day of September 1975.

Present:

HON. JOAN MARIE DURANTE,

Justice.

ALICE M. CALHOUN,

Plaintiff,

—against—

ROBERT CALHOUN JR.,

Defendant.

FINDINGS AND JUDGMENT

Plaintiff, ALICE M. CALHOUN, having brought this action for a judgment of absolute divorce by reason of the cruel and inhuman treatment and abandonment of the plaintiff by the defendant, ROBERT CALHOUN JR., and the Summons bearing the notation "ACTION FOR A DIVORCE" and verified Complaint having been duly served upon the defendant personally within this State and the defendant having failed to appear or answer the complaint and the time for the defendant to appear or answer the complaint having expired and said time not having been extended by stipulation or otherwise and said plaintiff having applied to this

Findings and Judgment of New York Supreme Court

Court, at a Special Term Part V thereof, for judgment for the relief demanded in the complaint and the matter having been set down for a hearing on the 27th day of August, 1975, plaintiff having on that day appeared before me and presented written and oral proof of service and in support of the essential allegations of the complaint and said proof having been heard and considered by me and a motion having been made by plaintiff to conform the pleadings to the proof presented at the hearing and the said motion having been granted, I FIND AND DECIDE AS FOLLOWS:

FINDINGS OF FACT

1. That the plaintiff and defendant were both over the age of twenty-one years when this action was commenced.
2. That at the time of the commencement of this action and for a continuous period of at least one year preceding such commencement, plaintiff resided in this State.
3. That plaintiff and defendant were married in the City of St. Louis, State of Missouri, on the 27th day of February, 1955.
4. That there are two children of the marriage, namely: Roberta Calhoun, born February 8, 1956 and Arleen Calhoun, born June 16, 1961.
5. That for more than one year last past and since September 1973, defendant has willfully and continuously abandoned the plaintiff in that he has failed and refused to cohabit with and has abandoned the plaintiff.

Findings and Judgment of New York Supreme Court

6. That plaintiff has at all times conducted herself in a proper and wifely manner toward the defendant and in a proper and motherly manner toward her children and that at no time did the plaintiff do anything to provoke defendant's abandonment of her.

CONCLUSIONS OF LAW

- I. That jurisdiction, as required by Section 230 of the Domestic Relations Law has been obtained.
- II. That plaintiff is entitled to a Judgment of Divorce and to the granting of the incidental relief awarded herein.

JUDGMENT

Now, on motion of George M. Winston, attorney for the plaintiff, it is

ADJUDGED AND DECREED that the marriage between Alice M. Calhoun, plaintiff and Robert Calhoun Jr., defendant is dissolved by reason of abandonment; and it is further

ADJUDGED AND DECREED that Alice M. Calhoun, plaintiff, be awarded custody of the infant issue of the marriage, to wit:

Roberta Calhoun, born February 8, 1956 and Arleen Calhoun, born June 16, 1961; and it is further

ORDERED, ADJUDGED AND DECREED that the defendant shall pay to the plaintiff by check, cash or money order drawn

Findings and Judgment of New York Supreme Court

to the order of the plaintiff and forwarded on Monday of every other week commencing with the 1st day of September, 1975, the first Monday after the date of the hearing herein, to the home of the plaintiff or at such other place as she may designate in writing the sum of \$473.00 bi-weekly for the infant children of the parties herein which sum is inclusive of all obligations of the defendant for the support and maintenance of the infant children of the parties herein, except extraordinary medical or dental expenses; and it is further

ORDERED, ADJUDGED AND DECREED that defendant, ROBERT CALHOUN JR., be and he hereby is directed to vacate the home of the parties herein located at 111-11 132 Street, Jamaica, New York, within fifteen days after service of a copy of these Findings and Judgment and said defendant shall permit the plaintiff and her children to have exclusive possession of said premises; and it is further

ORDERED, ADJUDGED AND DECREED that the defendant Robert Calhoun Jr., be and he hereby is directed to pay to plaintiff's attorney, George M. Winston, the sum of \$500.00 as and for counsel fees incurred by said plaintiff in this action; and it is further

ORDERED, ADJUDGED AND DECREED that this Court and the Family Court shall have concurrent jurisdiction to determine the amount of support to be paid by the defendant to the plaintiff for the two minor children herein and the visitation rights of the defendant and that a copy of these Findings and Judgment of Divorce be filed with the Clerk

Findings and Judgment of New York Supreme Court

of the Family Court, Queens County, within ten days after entry. ORDERED, that the wife may resume her maiden name.

ENTER

JOAN MARIE DURANTE
JSC

JOHN J. DURANTE, Clerk

GRANTED
SEP. 9, 1975
JOHN J. DURANTE
Clerk

Notice of Appeal

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

Docket No. 76-7384

ROBERT CALHOUN JR.,

Plaintiff-Appellant,

VS.

THE STATE OF NEW YORK, et al.,

Defendants-Appellees.

NOTICE IS HEREBY GIVEN THAT Robert Calhoun Jr., plaintiff-appellant above named, hereby appeals, pursuant to 28 USC 1254(1), to the Supreme Court of the United States from the final judgement of the United States Court of Appeals for the Second Circuit, entered on the tenth day of February 1977.

The judgement entered by the United States Court of Appeals for the Second Circuit affirms the dismissal of the complaint issued by the District Court and denies the appellant's motion to hold the defendants in default for failing to respond to the summons issued by the District Court. The judgement also fails to answer the questions presented in the appellant's brief.

The judgement fails to comply with the rules of appellate procedure in that the judgement does not conform to Rule 36 of the Rules of Appellate Procedure nor is the judgement a summary judgement as recorded in the Court's record.

March 3, 1977

Robert Calhoun Jr.
111-11 132nd Street
Jamaica, New York 11420^o

AUG 8 1977

MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1976

No. 77-45

ROBERT CALHOUN,*Appellant,**against*

THE STATE OF NEW YORK, et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

**MOTION TO DISMISS OR AFFIRM ON BEHALF
OF APPELLEE, STATE OF NEW YORK**

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ROBERT CALHOUN,

Appellant,

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THE STATE OF NEW YORK, et al.,

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ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

**MOTION TO DISMISS OR AFFIRM ON BEHALF
OF APPELLEE, STATE OF NEW YORK**

Appellee, State of New York, respectfully moves the court pursuant to Rule 16(a)(b) to dismiss this appeal on the ground that appellant has failed to raise a substantial federal question and, in part, for want of jurisdiction.

Opinions Below

The decision of the Court of Appeals is reported at 553 F. 2d 93 and is reproduced at pages 1-3 of the appendix to the Jurisdictional Statement (hereinafter J.S.). The unreported memorandum and orders of the United States District Court, Eastern District of New York (JUDD, J.) are reproduced at pages 4-7 of the appendix to the Jurisdictional Statement.

Jurisdiction

The opinion of the United States Court of Appeals for the Second Circuit is dated February 10, 1977. A Notice of Appeal to the United States Supreme Court was filed on or about March 3, 1977. Appellant invokes the jurisdiction of the court pursuant to 28 U.S.C. § 1254(1).

Question Presented

Was this action pursuant to 42 U.S.C. § 1983 against the State of New York and the Supreme Court of New York properly dismissed?

Statement of the Case

This case was instituted by the service of a summons and complaint on the office of the Attorney General of the State of New York seeking monetary damages against the State of New York, the Supreme Court of New York, Queens County, Chief Clerk Kaliski, Mr. Krumsiek, Court Officer Reed, Alice M. Smith and George M. Winston* (Appendix A, pages 5-10).

Prior to the time for the appellee State of New York to move or answer, the District Court *sua sponte* on September 26, 1975 and December 4, 1975 respectively, dismissed the appellant's complaint (pp. 4-8, Appendix to J.S.) and denied appellant's motion for a default judgment against the State of New York.

* Kaliski, Krumsiek and Reed are apparently State Court personnel, were not served nor appeared in this action. Alice M. Smith, who is the appellant's former wife, and George M. Winston, her attorney in the State divorce proceedings, also have not been served or appeared in the federal proceedings below.

The appellant filed his appeal to the Court of Appeals for the Second Circuit on or about October 3, 1975 for the dismissal of the complaint.

In the appendix filed by the appellant with the Court of Appeals for the Second Circuit *inter alia* were the judgment of Justice Joan Marie Durante of the Supreme Court of the State of New York, Queens County, dated September 9, 1975, reciting jurisdiction over the appellant and granting a divorce against him in an action entitled *Alice M. Calhoun** against *Robert Calhoun, Jr.* and a subsequent order of Justice Edwin Kassoff, after a hearing in the same action, dated February 24, 1976, granted a motion by Alice M. Calhoun against appellant holding him in contempt of court and denying appellant's cross-motion to set aside the judgment of Justice Durante (pp. 8-15, Appendix to J.S.). Under New York State practice both the judgment and order are appealable as of right.**

ARGUMENT

Appellant has failed to raise a substantial federal question requiring plenary consideration by this Court.

The only "person" served in this action was the Attorney General of the State of New York, in behalf of the defendant State of New York. It is basic that an action against the State cannot be maintained under the Civil Rights Act as well as the ban against review of the State court judgment in the district court. Properly therefore the District Court *sua sponte* dismissed the complaint under the doctrine of *Monroe v. Pape*, 365 U.S. 167 (1961) and *Huffman v. Pursue*, 420 U.S. 592 (1975). Appellant then, perhaps suggested by the *obiter dicta* in the District Court's memo-

* Alice M. Calhoun is apparently the Alice M. Smith named in this action.

** New York State Civil Practice Law and Rules.

randum, sought his remedy to challenge the decree of divorce in State Court (pp. 6, 8-10, Appendix to J.S.). The appellant's failure to set aside the decree of divorce is apparently the subject of an appeal in the State Courts where his criticism of the decree can be fully aired by him.

No individual employee has been served or appeared in this case and, as appropriately held by the court below, the State of New York may not be sued for money damages (pp. 1-3, Appendix to J.S.).

CONCLUSION

The appeal should be dismissed or, in the alternative, the decision of the Court of Appeals for the Second Circuit affirmed.

Dated: New York, New York, August 5, 1977.

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Appellee
State of New York

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

HAROLD TOMPKINS
Assistant Attorney General
of Counsel

APPENDIX A.

Summons and Complaint.

UNITED STATES DISTRICT COURT

FOR THE

EASTERN DISTRICT OF NEW YORK

Civil Action File No. 75C 1565
(JRB)

ROBERT CALHOUN JR.

Plaintiff

v.

THE STATE OF NEW YORK, its agents SUPREME COURT OF
NEW YORK, QUEENS COUNTY, CHIEF CLERK KALISKI, Mr.
KRUMSIEK and COURT OFFICER REED.

AND

ALICE M. SMITH and GEORGE M. WINSTON

Defendant

SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve upon Robert Calhoun Jr. plaintiff's attorney, whose address 111-11 132nd Street, Jamaica, New York 11420 an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive

Appendix A.

of the day of service. If you fail to do so judgment by default will be taken against you for the relief demanded in the complaint.

ROBERT CALHOUN, JR.
Deputy Clerk.

[Seal of Court]

DATE:

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

Appendix A.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

DOCKET NUMBER

ROBERT CALHOUN JR.,

Plaintiff,

—against—

STATE OF NEW YORK, its agents SUPREME COURT OF NEW YORK, CHIEF CLERK KALISKI, MR. KRUMSIEK, COURT OFFICER REED

AND

ALICE M. SMITH, and GEORGE M. WINSTON

Defendants

COMPLAINT

This action arises under the Constitution Of The United States Of America the Fourteenth Amendment, the Civil Rights Act Of 1964 as Amendment, Criminal Code 20, 18 US 241, 242, 42 US 1983, Civil Rights Act etc. here in after more fully appears. The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

Plaintiff claims that the State of New York did deny him due process of law on September 19, 1975 when the Supreme Court of New York at 88-11 Sutphin Boulevard, Jamaica, New York refused to accept his papers for filing.

Plaintiff claims that the State of New York did violate his constitutional rights when the Supreme Court of New

Appendix A.

York issued a judgment against him without allowing him the opportunity to be heard.

Plaintiff claims that the State of New York denied him equal protection of the law when it refused to allow him to contest the divorce decree.

Plaintiffs claims that the State of New York denied him his right to petition the government when Court Officer Reed would not allow him to speak to Judge Livoti about the refusal of the clerks to accept his papers for filing.

Plaintiff claims that Chief Clerk Kaliski violated his Constitutional Right to be heard when he refused to accept his papers for filing.

Plaintiff claims that Mr. Krumsiek did also violate his right to be heard.

Plaintiff claims that Alice M. Smith and George M. Winston did violate his right to be heard when they conspired to deny him the opportunity to contest the divorce.

Plaintiff claims that Alice M. Smith did invade his privacy and seized his personal property and used it against him.

Plaintiff claims that George M. Winston did interfere with his marriage infringing on his contract and separating him from his wife by coercing her against him.

Plaintiff claims that the State of New York and George M. Winston did misuse the legal process in obtaining and granting the divorce decree.

Plaintiff begs the Court to grant him twenty five million dollars for the personal injury inflicted upon him by this gross act of deceit, fraud and premeditated turpitude.

Plaintiff begs this Court to find that New York State in violation of its own laws and liable to the plaintiff for punitive as well as personal damages of two thirds of the total damages. First because the State of New York aided and abetted the culprits in this conspiracy and that they by threat of force did deny the plaintiff's right to petition for redress. This to the plaintiff's beliefs is *enslavement*.

Appendix A.

Plaintiff further pleads to this Court to restrain and prohibit George M. Winston from ever perpetrating such an act again. Plaintiff ask that his liability be fixed at two thirds of the remaining one third of the damages prayed for.

Plaintiff now ask the Court to supervise the execution of its judgment in action.

Plaintiff, *Robert Calhoun Jr.* submit this humble plea for your most kind consideration and your most honest judgment.

Signed ROBERT CALHOUN JR.
Robert Calhoun Jr.

Notary

On this day of *September 21, 1975* came *Robert Calhoun Jr.* swearing to the statements made in this complaint and requesting that I witness his signing of it as it now stands.

Signature of Notary WILLIAM MULLER
Date September 22nd, 1975

WILLIAM MULLER
Commissioner of Deeds
City of New York 4-1293
Certificate filed in New York County
Commission Expires March 1, 1976

Copies to:

Attorney General Of The State
Of New York
2 World Trade Center
New York, New York

Appendix A.

George M. Winston Esq.
108-18 Queens Blvd.
Forest Hills New York 11375

Alice M. Smith
111-11 132nd Street
Jamaica, New York 11420

Appendix A.

AFFIDAVIT OF FACTS

ON FRIDAY SEPTEMBER 19, 1975, I went to the Supreme Court Of New York located at 88-11 Sutphin Boulevard, in Jamaica, New York to file a motion to a judgment that I had received on Monday September 15, 1975. I went to the Special Sessions Office and offered my papers for filing. The man in the Special Sessions Office said that my papers were not in proper order and that I should get a lawyer to put them in order. When I asked what was wrong with my papers he did not say yet he still refused to accept them. I asked him to reject them officially and give them back to me. He refused to reject them also. I went to the Matrimonial Session and they too refused to accept them. I then tried to see a judge (Judge Livoti) and a court officer (Officer Reed) confronted me and said that he would not let me go up to see the judge. I went outside and took the name of the court officer that had directed me to the court room (his name: Officer Stumpf #2222). I got the name of the man in the Matrimonial Session that refused to accept them and I also got the name of the Chief Clerk in the Special Sessions Office that had refused to accept them (Chief Clerk Kaliski, Mr. Krumsiek). A Mr. Hecht was one of the court personnel that I spoke to in my efforts to get my papers filed.

After more than forty minutes of going back and forth and not understanding why my papers were not being accepted I left the court.

I feel that this denial of my right to be heard is part of a conspiracy that involves the defendants in this action.

Appendix A.

NOTARY

I, *Robert Calhoun Jr.* do swear that the statements made in this affidavit is true to the best of my recollection.

ROBERT CALHOUN JR.
Robert Calhoun Jr.

SWORN BEFORE ME WM. MULLER ON
THE 22ND DAY OF SEPTEMBER, 1975
NINETEEN SEVENTY FIVE.

WILLIAM MULLER
Commissioner of Deeds
City of New York 4-1293
Certificate filed in New York County
Commission Expires March 1, 1976
WILLIAM MULLER